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Companies (Amendment) Act, 2021 - Summary

Amendments to the Companies Act 2017

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EXECUTIVE SUMMARY

This document contains summary of amendments made to **the Companies Act 2017** through **Companies (Amendment) Act 2021** (here-in-after referred to as ‘the Act’). Majority of the amendments had already been introduced through the *Companies (Amendment) Ordinance 2020* promulgated in April 2020. Due to the lapse of the ordinance, these amendments have now been introduced via the Act as well.

The main focus of the Act is to allow ease of business particularly for start-ups and private companies. For this purpose a number of amendments have been introduced for companies to conduct operations more easily following incorporation. These include omission of requirements for **Subscription Money Certificate**, **Company Seal** and **Filing of unaudited financial statements**. Also, scope of certain provisions have been expanded such as **Further Issue of Shares** (other than right) and **Buy-Back of shares** to allow these for private companies as well.

A new section 458A has also been added allowing SECP to introduce further measures for providing greater ‘ease of doing business’ as well as for improving regulatory quality and efficiency; and facilitating innovation and the use of technology in conducting business by the corporate sector.

The rest of this document provides further description of these amendments.

The Act in its entirety can be accessed from here:

[Companies \(Amendment\) Act 2021](#)

For any queries or feedback feel free to contact us.

Warm Regards,

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Companies (Amendment) Act 2021 - Summary 2

DEFINITION OF 'STARTUP COMPANY' (SECTION 2)

A new clause has been inserted in the section defining a 'startup company' as follows:

“Startup Company” means a company that-

- a) Is in existence for not more than ten years from the date of its incorporation or such other period or periods as may be specified; and
- b) Has a turnover for any of the financial years since incorporation that is not greater than five hundred million rupees or such other amount or amounts as may be specified; and
- c) Is working towards the innovation, development or improvement of products or processes or services or is a scalable business model with a high potential of employment generation or wealth creation or for such other purposes as may be specified; or
- d) Such other companies or classes of companies as may be notified by the commission.

Provided that a company formed by the splitting up or re-construction of an existing company shall not be considered as a startup company.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

PAYMENT OF SUBSCRIPTION MONEY (SECTION 17)

The requirement for payment of **subscription money** within **30 days** of incorporation, as well as the requirement for submission of **certificate** verifying receipt of the money so subscribed to the registrar, has been **omitted**.

Members are still required to deposit such money which shall be a due to the company however the period of payment within 30 days has been removed.

This omission had been previously introduced by the Companies (Amendment) Ordinance 2020.

COMMON SEAL (SECTION 23)

The requirement for a company to have a **common seal** has been **omitted**.

This omission had been previously introduced by the Companies (Amendment) Ordinance 2020.

FURTHER ISSUE OF CAPITAL (SECTION 83)

FURTHER ISSUE (OTHER THAN RIGHT) BY PRIVATE COMPANIES

A new clause has been inserted in section 83(1) in relation to further issue of shares other than right issue. This clause now allows a **private company** to issue further shares to **any person**, for cash or otherwise, subject to special resolution and the articles of the company.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

OFFER LETTER FOR RIGHT ISSUE

A new amendment has been made in respect of offer letter for rights issue. The amendment requires a **circular** to be accompanied with the offer letter explaining state of affairs of the company, latest statement of accounts and the necessity for the issue. This circular is required to be signed by all directors, or an officer authorized by them in this regard.

A copy of the circular is also required to be filed with the registrar simultaneously along with dispatch to members.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

EMPLOYEES' STOCK OPTIONS (NEW SECTION 83A)

A separate section has been inserted for employees' stock options whereas this subject matter had earlier been covered within *section 83 Further Issue of Capital*. The amendment now allows **all companies** to issue shares under such scheme if allowed by the articles and under authority of a special resolution, whereas previously it was only allowed for public companies.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

BUY-BACK OF SHARES (SECTION 88)

Amendment has been made allowing **unlisted companies** to **buy back shares** as well. However such shares cannot be kept as treasury shares but rather would be required to be cancelled. It is also clarified that such cancellation would not be treated as a 'reduction of capital' for the purposes of section 89.

The option for purchase through **tender offer** has also been removed therefore all buy back of shares under this section shall be made through the **securities exchange** only.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.



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NOTICE OF RESOLUTION BY MEMBERS (SECTION 140)

The percentage of shareholding required to give notice of a resolution by members has been reduced from 10% to **5%**.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

DIRECTOR'S RESOLUTION BY CIRCULATION (SECTION 179)

The requirement for resolution by **circulation** to be signed by all directors has been substituted. Now resolution can be passed through approval of **majority** of the directors.

DIRECTOR'S REPORT (SECTION 227)

DIRECTOR'S REMUNERATION

Amendment has been made making it mandatory for a public company (or private company being subsidiary of a public company) to disclose **remuneration** of directors and chief executive in the **directors report** including salary, benefits, bonuses, stock options, pension and other incentives.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

NON-PAYMENT OF DIVIDEND

Amendment has been made requiring a **listed company** to disclose reason for **non-payment of dividend** despite earning profits and future prospects of dividend, in the director's report.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.

FILING OF UNAUDITED FINANCIAL STATEMENTS (SECTION 234)

The requirement for a private company to file **unaudited financial statements** has been **omitted**. Previously private companies with paid up capital of less than PKR 1 million were required to file financial statements with the register whether audited or not.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.



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PROMOTION OF EASE OF BUSINESS (NEW SECTION 458A)

A new section has been introduced with an aim for providing greater 'ease of doing business' as well as to allow innovation of technology in conducting business by the corporate sector. The amendment has been introduced allowing the Commission to implement measures in order to fulfill this aim.

Some measures suggested in the amendment include constituting special task force for promoting Fintech in business; creating environment for testing and examining impact of innovation e.g. through API, cloud based softwares, crowd funding etc.; promotion of IT for meeting regulatory requirements such as CDD, issuance of STR etc.; specifying exemptions and incentives under prevailing laws for startups; among other measures as the commission may deem appropriate.

This amendment had been previously introduced by the Companies (Amendment) Ordinance 2020.